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**Letter dated 27 July 2004 from the Permanent Representative of Côte d'Ivoire to the United Nations addressed to the President of the Security Council**

I have the honour to transmit herewith the observations of the Republic of Côte d'Ivoire on the report of the Security Council mission in Côte d'Ivoire (S/2004/525) (see annex).

I should be grateful if you would have the attached observations circulated as a document of the Security Council.

(*Signed*) Philippe **Djangone-Bi**
Ambassador
Permanent Representative

04-44613 (E) 020804 020804

## Annex to the letter dated 27 July 2004 from the Permanent Representative of Côte d'Ivoire to the United Nations addressed to the President of the Security Council

## Observations of Côte d'Ivoire on the report of the Security Council Mission in Côte d'Ivoire (S/2004/525)

Côte d'Ivoire appreciates the interest shown by the international community in the normalization of the internal situation. It would like to reiterate its gratitude to the Security Council mission which has just visited the country.

The visit of the International Commission of Inquiry is an integral part of the initiative referred to above. The people of Côte d'Ivoire put their hopes in this Commission, for since 19 September 2002, many parts of the territory have been transformed into lawless zones where impunity prevails. The Commission will have to shed light on cases of violation of the right to life, torture and arbitrary arrests, and violations of the right to property and freedom of expression. Above all, it will have to treat evil at its roots by establishing how the right of the people of Côte d'Ivoire to peace has been violated. This right, which is at the heart of the Charter of the United Nations is set out in article 23 of the African Charter on Human and People's Rights in the following terms:

> "*All peoples shall have the right to national and international peace and security. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.*"

Thus, the following essential questions will have to be answered:

Who is behind, and who are the perpetrators of, this murderous violence which, on 19 September 2002, plunged Côte d'Ivoire into mourning?

What are the rear bases and remote support mechanisms of those who have violated the right of the Ivorian people to live in peace?

Answering these questions and identifying those responsible are essential to the fight against impunity and restoration of peace. It is from this peace that the rule of law will be able to take root.

In the interest of complying with the rule of law, we wish to make the following observations on paragraph 18 of the report. That paragraph reads, inter alia:

> "*President Gbagbo assured the mission, at a meeting at which the Prime Minister and the President of the National Assembly were also present, that he would convene a special session of the Assembly should it fail to adopt those bills by that date. The President indicated, however, that, as provided for by the Constitution of Côte d'Ivoire, the submission of the draft law on article 35 on the question of eligibility would take place only after the national territory had been reunified, meaning after completion of the disarmament, demobilization, rehabilitation and reintegration programme and the restoration of State authority throughout the country. The mission challenged this assertion and, indeed, on many occasions during its visit, expressed its*

*regret at the lack of trust between the parties, which had led them to put preconditions on the implementation of key elements of the Linas-Marcoussis Agreement.*"

The Mission should explain the reason for its challenge so that its relevance may be properly understood.

The Mission challenged "*this assertion*". An assertion is defined as the act of asserting, and to assert something means to "*affirm that something is true*". This implies that "to assert" means to give an opinion on facts. Did the President of the Republic pass a judgement on facts, as charged? The President merely mentioned the conditions under which some provisions of the Constitution can be amended.

In this regard, it is worth recalling that the provisions of article 35 of the Constitution of Côte d'Ivoire concern the election of the President of the Republic. Paragraph 2 of article 126 provides that:

"*Any bill or proposed amendment shall necessarily be submitted to referendum if it concerns the election of the President of the Republic, the exercise of the presidential mandate, the vacancy of the office of the President of the Republic or a procedure to amend the present Constitution.*"

Article 127 provides that: "*No amendment procedure may be undertaken or pursued when the integrity of the territory is undermined.*"

There is no doubt that part of the territory of the Republic of Côte d'Ivoire is still occupied, in defiance of paragraph III of the annexes to the Linas-Marcousiss Agreement, which makes it one of the priorities of the Government of National Reconciliation.

By specifying that "*as provided for by the Constitution of Côte d'Ivoire, the submission of the draft law on article 35 on the question of eligibility would take place only after the national territory had been reunified, meaning after completion of the disarmament, demobilization, rehabilitation and reintegration programme and the restoration of State authority throughout the country*", the President of the Republic has not given his views on facts or the question of timing. He has only recalled the need to comply with the law.

Is that the matter on which the mission challenges him? Is the mission asking him to violate the law? If such were the case, it would be not only surprising, but also a great source of concern. Can one imagine the United Nations opposing the rule of law, when it was created by the law and for the law?

It is the Constitution of a country which allows that country to attain to international law. And it is through countries' attainment to international law that the United Nations owes its existence; hence its attachment to the rule of law and legal principles.

Adherence to the Constitution makes it possible to move from autocracy to democracy. It is democracy which can be acknowledged as this rule of law which, according to the preamble to the Universal Declaration of Human Rights, must protect human rights so that man is not obliged, as a last resort, to rebel against tyranny and oppression. To ask the head of State to violate the Constitution of his country is to try to turn him into an autocrat, whereas what characterizes the rule of law is precisely the submission of rulers and agents of the State to that law.

In this respect, the President of the Republic will do everything he can to ensure that the bills proposed by the Linas-Marcoussis Agreement are adopted in strict compliance with the Constitution, whose primacy is acknowledged by the Agreement itself. In that spirit, the head of State is ready, should the bills not be adopted or be adopted in a form not satisfactory to some, to use the prerogative granted him by article 42 of the Constitution to submit the bill or some articles thereof to a second reading in the National Assembly before promulgating the law. This is the recourse he has in a system of separation of powers in which it is forbidden for him to give orders to members of Parliament. The latter, in accordance with article 66 of the Constitution, are representatives of the whole nation. The same article, in conformity with almost universal legal tradition, inherited by the Ivorians] from the French legal system (article 27 of the French Constitution), provides that all mandatory instructions are void. As the guardian of peace through the rule of law, the Security Council will undoubtedly appreciate future developments in the light of this legal perspective.

Done in Abidjan, on 23 July 2004